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THE TRUMP CASES

# Justice Dept. plans to pursue Trump cases past Election Day, even if he wins

If Donald Trump is elected president, the finish line for federal prosecutors is Inauguration Day, not Election Day, people familiar with the discussions said

By [Devlin Barrett](#) and [Perry Stein](#)  
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Special counsel Jack Smith announces the indictment of former president Donald Trump during a news conference in Washington on Aug. 1. (Ricky Carioti/The Washington Post)

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Justice Department officials plan to pursue the criminal cases against Donald Trump past Election Day even if he wins, under the belief that department rules against charging or prosecuting a sitting president would not kick in until Inauguration Day in January, according to people familiar with the discussions.

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That approach may become more consequential given this week's Supreme Court ruling on presidential immunity, which probably will lead to further delays to Trump's election interference trial in D.C. and has already affected one of his state cases.

Senior law enforcement officials have long viewed the two federal indictments against Trump — the 45th president and the presumptive Republican nominee in this year's election — as operating with potential time constraints. That's because of long-standing Justice Department policy that officials cannot criminally charge a sitting president.

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Lawyers in the department do not believe the policy bars them from proceeding against a president-elect, however, according to the people familiar with the discussions, who spoke on the condition of anonymity to describe internal deliberations.

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The plan to continue filing motions, seeking court hearings, and potentially conducting a trial between Election Day and Inauguration Day underscores the highly unusual nature of prosecuting not just a former president, but also possibly a future one. In the months after winning election, a president-elect assumes some of the trappings of the office, such as more security and high-level briefings, but that person is not the commander in chief.

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In the midst of a presidential election in which criminal cases have

played a central role, any court activity involving a president-elect would push American politics deeper into uncharted territory. Ultimately, it would be up to the courts to decide when and how to hold hearings or a trial involving a president-elect.

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“The Justice Department isn’t governed by the election calendar. Its prosecution of Trump is based on the law, the facts and the Justice Manual — the department’s bible that lays out the post-Watergate norms that have prevented it from being weaponized,” said Anthony Coley, a former Justice Department spokesman for Attorney General Merrick Garland who left the agency last year. “Until those norms change, or they’re ordered otherwise, I’d expect this Justice Department to be full speed ahead. And they should be.”

Current officials, speaking on the condition of anonymity, expressed the same sentiment — that if Trump wins the election, the clock on the two federal cases against him would keep ticking until Jan. 20, when he would be sworn in as the 47th president.

A spokesman for special counsel Jack Smith declined to comment. Trump spokesman Steven Cheung said the criminal cases against Trump are “hoaxes” that “are imploding as their collective efforts to interfere in the election have massively backfired.”

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On Monday, the final day of its term, the Supreme Court ruled 6-3 along ideological lines that Trump and other presidents have broad immunity from prosecution for official acts. The landmark decision also found that presidents do not have immunity for private acts, leaving it unclear exactly where the line would be drawn between the two.

The ruling came in the pending prosecution of Trump for alleged obstruction of the 2020 election results. Legal experts said the high court's decision means it is highly likely that trial won't take place before the November election, as prosecutors and Trump's lawyers spar further over what evidence can still be used against him. Those decisions, too, may ultimately end up before the Supreme Court.

Even before the immunity ruling, Justice Department officials were skeptical there would be a federal trial of Trump before the 2024 election, according to people familiar with the discussions. In addition to the D.C. election obstruction case, he is charged in Florida with mishandling classified documents after leaving the White House and obstructing government efforts to retrieve them.

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The two federal cases were scheduled to go to trial in the spring but have been slowed significantly for different reasons.

In Florida, the trial judge has spent months poring over a host of long-shot defense motions to get the case dismissed. The election obstruction case filed in Washington was frozen as an appeals court and the Supreme Court wrestled with the question of presidential immunity.

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The Supreme Court ruled that Trump is immune from prosecution for official actions taken while in the White House, but that he lacks such immunity for unofficial acts. The 6-3 ruling, decided on ideological lines, sends the case back to a lower court to determine whether the acts alleged in the indictment were official or unofficial acts.

Even when the case in D.C. resumes, there are likely to be a series of pretrial battles in addition to the immunity questions that consume a significant amount of time. Given the pace of hearings to date in the two federal cases, it's possible that even with the longer time window until Inauguration Day, neither will go to trial by then.

If Trump wins the presidency, his legal team probably would ask the judges overseeing the cases to dismiss the charges outright, or at least put the cases on ice while he is president. Trump's attorney general could also move to have the charges dropped.

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Trump separately faces a criminal indictment in Georgia, where Fulton County District Attorney Fani T. Willis has accused him of a conspiracy to obstruct the 2020 election results in that state.

The Georgia case, which is stalled by a different appeals issue, will also be affected by the immunity ruling. Trump's lawyers in that case have argued that if their client is elected president, his trial could not take place until at least 2029, when he leaves office.

Ripple effects from the immunity ruling have already begun in Trump's other state case.

In New York, where Trump was convicted in May of falsifying business records relating to a hush money payment to an adult-film actress, the trial judge on Tuesday pushed back Trump's sentencing, which had been scheduled for next week. The judge gave lawyers weeks to file written arguments over Trump's claim that his conviction should be tossed out in the wake of the high court's immunity decision.

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Trump's claim won't necessarily sway the judge, because the type of conduct at issue in the hush money case may well fall into the category of what the Supreme Court called nonofficial, personal actions for which a president can still be prosecuted.

The former president is also likely to argue that some evidence used during the trial involved his official conduct and should have been excluded, based on the Supreme Court ruling.

### More on the Trump Jan. 6 case

**The latest:** [What is presidential immunity?](#) The Supreme Court ruled that former president [Donald Trump is immune from prosecution](#) for his "official acts" in office. Here are key [takeaways from the Supreme Court's immunity decision](#) and what's next in [Trump's case with special counsel Jack Smith](#).

**The trial:** The [Supreme Court's immunity decision](#) likely means that Donald Trump's federal trial can eventually proceed in D.C., but only after additional delay. The [March 4 trial date was taken off the calendar](#) and jury selection was postponed indefinitely.

**The charges:** [Trump pleaded not guilty to charges that he plotted to overturn the 2020 election](#) in the run-up to the Jan. 6, 2021, attack on the U.S. Capitol. Here's a [breakdown of the charges against Trump](#) and what they mean, and [things that stand out](#). [Forbes](#) [The New York Times](#) [The Washington Post](#)

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